BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JEANNETTE CLUCK, Claimant	)	
VS.	)	
	)	Docket No. 268,975
HIGHLAND COMMUNITY COLLEGE, Respondent	)	
AND	)	
KANSAS ASSOCIATION OF SCHOOL BOARDS, Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the preliminary hearing Order dated December 11, 2001, entered by Administrative Law Judge Bryce D. Benedict.

Issues

Judge Benedict ordered respondent and its insurance carrier to provide claimant medical treatment with Dr. Ketchum. Respondent and its insurance carrier (respondent) contend they are not liable for additional medical treatment because claimant suffered an intervening accident and injury.[1] The issue for Appeals Board (Board) review is whether claimant's present need for medical treatment is a direct and natural consequence of her accidental injury or injuries that arose out of and in the course of her employment with respondent.

[1] At page 6 of the transcript of the December 5, 2001, Preliminary Hearing, counsel for respondent and its insurance carrier, Mr. Emerson, advised the Court that they had deauthorized Dr. Twombly and were "asking the Court for an order saying that we're not responsible for future [medical treatment]." But at page 23, Mr. Emerson said Dr. Twombly was still authorized to provide treatment for some of claimant's complaints, "but not for numbness."

Findings of Fact and Conclusions of Law

After reviewing the record compiled to date, the Board finds the Administrative Law Judge's preliminary hearing Order should be affirmed.

Findings of Fact

1. Claimant was employed by respondent as a custodian. On February 23, 2001 claimant injured her left hand and wrist when she slipped and fell on ice while locking up a school building. Timely notice of this accident and injury was given to respondent on the following Monday, February 26, 2001.

2. Claimant thereafter continued performing her regular job duties for respondent including dusting, mopping, sweeping, cleaning windows, buffing, stripping and waxing floors. As a result, claimant alleges she suffered a series of repetitive use injuries and aggravations to her left upper extremity through September 9, 2001. She first requested medical treatment from respondent on April 9, 2001.

3. In early May 2001 claimant used a front pull, self-propelled roto tiller at her home for less than five minutes before she quit because of pain. Respondent contends this incident constituted an intervening injury. Claimant disputes this contention and points out that her left hand and arm had started going numb during the last part of March and early April while using the large floor buffing and stripping machines at work.

4. Claimant was first seen by Dr. Kim Twombly on April 10, 2001. At that time her complaints included pain and numbness in her left hand and arm. On May 15, 2001, claimant returned to Dr. Twombly complaining of numbness "ever since" the roto tilling. Claimant admits that the roto tiller made her symptoms worse temporarily, but says she had the same complaints of pain and numbness in March and April, and told this to Dr. Twombly. Furthermore, claimant continued running the buffer and stripper machines at work during the summer months which caused some of her symptoms to continue worsening.

Conclusions of Law

An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.[2] The test is not whether the accident causes the condition, but whether the accident aggravates or

[2] Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

accelerates the condition.[3] An injury is not compensable, however, where the worsening or new injury would have occurred even absent the accidental injury or where the injury is shown to have been produced by an independent intervening cause.[4] When a primary injury is shown to arise out of and in the course of employment, every natural consequence flowing from that injury, including new and distinct injuries, are compensable so long as they are the direct and natural consequence of the primary injury. [5]

Respondent contends it was the roto tilling in May 2001 that caused claimant's pain and numbness to reoccur and worsen. Respondent argues that this activity constitutes a new injury or aggravation of her preexisting condition which relieves respondent and its insurance carrier from any responsibility for claimant's additional medical treatment. Claimant used the tiller one time after her slip and fall accident for less than five minutes, whereas she used the buffing and stripping machines for up to five to eight hours a day for several months. Furthermore, she testified she had used the tiller for five years before her accident and never had any problems before. Claimant testified some of her symptoms worsened after she was treated by Dr. Twombly on May 15, 2001, but some symptoms are better.

Claimant denies that the tilling caused any new problems in her hand, wrist or arm. Respondent presented no witness testimony to refute these allegations. Dr. Twombly's records do not say that claimant was symptom free or had no numbness before using the tiller. Therefore, claimant's testimony is uncontradicted.

After observing claimant testify, Judge Benedict apparently found her testimony credible and ordered respondent and its insurance carrier to provide additional medical treatment. Considering claimant's testimony at preliminary hearing and the medical records in evidence, the Board agrees with the conclusion by the Administrative Law Judge. Therefore, the Board affirms the finding that claimant sustained personal injury by accident arising out of and in the course of her employment with respondent and her present need for medical treatment is a direct result of that employment.

Based on the record presented to date, the Board further finds claimant did not sustain an intervening accident or injury. Claimant's symptoms temporarily worsened from using the roto tiller. Claimant's symptoms were likewise worsened performing her work for respondent. There is no evidence that her few minutes of operating the roto tiller made her condition permanently worse or aggravated her condition beyond what resulted

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[3] Woodward v. Beech Aircraft Corp., 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

[4] Nance v. Harvey County, 263 Kan. 542, 952 P.2d 411 (1997); Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973).

[5] Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).

from her work activities for respondent. To the contrary, the Board finds claimant's gradual worsening to be a direct and natural consequence of her original February 23, 2001, slip and fall injury.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.[6]

WHEREFORE, the Board affirms the Order dated December 11, 2001, entered by Administrative Law Judge Bryce D. Benedict.

IT IS SO ORDERED.

Dated this _____ day of March 2002.

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BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

[6] K.S.A. 44-534a(a)(2).